

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

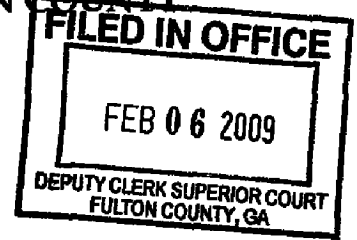
EDDIE W. HOLCOMB, SR.,

Plaintiff,

v.

NORFOLK SOUTHERN RAILWAY
COMPANY, F/K/A, NORFOLK
AND WESTERN RAILWAY
COMPANY, AND SOUTHERN
RAILWAY COMPANY, and
NORFOLK SOUTHERN
CORPORATION

Defendant.



CIVIL ACTION

FILE NO. 2009CV164484



COMPLAINT FOR DECLARATORY JUDGMENT

Eddie W. Holcomb, Sr., Plaintiff in the above-captioned action, for his
Complaint for Declaratory Judgment against this named Defendant alleges
and states as follows:

PARTIES, JURISDICTION AND VENUE

1.

Plaintiff Eddie W. Holcomb, Sr. is a resident of Dallas, Paulding
County, Georgia.

2.

Defendant Norfolk Southern Railway Company is a foreign
corporation with its principal place of business in Norfolk, Virginia and its

main claims office for Georgia in Fulton County, Georgia. The negotiations and contracts relevant to this action originated in Fulton County, Georgia. Defendant NS regularly conducts business in Georgia and entered the contract about which this action relates in Georgia. Defendant NS is subject to the jurisdiction of this court, venue is proper, and it may be served with summons and complaint as allowed by law.

3.

Defendant Norfolk Southern Corporation is a foreign corporation with its principal place of business in Norfolk, Virginia. Defendant NSC regularly conducts business in Georgia and entered the contract about which this action relates in Georgia. Defendant NS is subject to the jurisdiction of this court, venue is proper, and it may be served with summons and complaint as allowed by law.

FACTUAL BACKGROUND

4.

Prior to March 30, 1987, Plaintiff was employed as an engineer by the subsidiary of Norfolk Southern Corporation now known as Norfolk Southern Railway Company (hereinafter "Defendant" or the "Railroad").

5.

On and June 25, 1984, and on June 8, 1986, Plaintiff was injured in the course of his employment for the Railroad Defendants.

6.

As a result of his injuries, Plaintiff pursued damages under the Federal Employers Liability Act, 45 U.S.C. § 51, et. seq.

7.

On March 30, 1987, Plaintiff entered a Release of his claims, Exhibit A (the "Release") to this Complaint, by which in exchange for the sole consideration of \$218,131.48, he released the Railroad Defendants from all claims relating to the June 25, 1984, and June 8, 1986, events.

8.

The Release and the consideration documented therein, on its face and in its plain language as drafted by the Railroad Defendants, relates only to the damages associated with the injuries on June 25, 1984, and June 8, 1986.

9.

Also on March 30, 1987 Plaintiff signed a statement, Exhibit B to this Complaint, wherein he agreed that he was totally and permanently disabled and that he would not seek to re-enter the services of Norfolk Southern Corporation while totally disabled. Plaintiff did not resign from the

Defendants' railroad and continues to be on the seniority roster as an Engineer.

10.

Exhibit B was prepared by the Railroad Defendants.

11.

Exhibit B does not contain on its face, or in its language, or by reference to any other document, any expression of and exchange of consideration for this promise by the Plaintiff.

12.

Many years after the execution of the statement attached as Exhibit B, Plaintiff underwent a successful surgery, regained his health and ability to perform services as a railroad engineer, was no longer totally and permanently disabled, and asked Defendant NS to allow him to return to his job.

13.

Relying on Exhibit B, claiming that it is a valid agreement that prevents Plaintiff from exercising his seniority rights, Defendants have refused Plaintiff's requests that he be allowed to return to his work as an Engineer.

14.

Defendants insist that Plaintiff surrendered his right to exercise his seniority and return to work for the Defendant NS in Exhibit B.

15.

Plaintiff believes that Exhibit B is an unenforceable document, it is inapplicable because Plaintiff is no longer disabled, to the extent it is enforceable, he is no longer disabled, and the document is not an impediment to his ability to pursue his employment via the Railway Labor Act.

17.

Plaintiff is at risk of facing claims for attorney's fees and other potential penalties if he proceeds with pursuing his claim that he should be allowed to mark back up as an Engineer so long as the import and viability of Exhibit B is in question.

18.

By virtue of the facts alleged herein, an actual controversy exists between Plaintiff and Defendants. The issue of whether Exhibit B is an enforceable agreement given the lack of consideration, and given the fact that Plaintiff is no longer disabled, is in dispute, and consequently, Plaintiff is in a position of uncertainty and insecurity.

WHEREFORE, Plaintiff prays for judgment as follows:

- (a) That Exhibit B lacks consideration and is not an enforceable agreement; or
- (b) That Exhibit B is no longer applicable and does not prevent Plaintiff from returning to work now that he is not disabled;
- (c) That Plaintiff be allowed to exercise his seniority and take such steps as are appropriate to begin the process that will allow him to return to work for the Defendant;
- (d) That Plaintiff recover the costs and attorneys fees associated with the bringing of this action; and,
- (e) That Plaintiff recover such other and further relief as this Court deems just.

This ____ day of January, 2009.

Respectfully submitted,

WARSHAUER POE & THORNTON, P.C.

By: 

Michael J. Warshauer
Georgia Bar No. 018720
Douglas C. Dumont
Georgia Bar No 232680

3350 Riverwood Parkway
Suite 2000
Atlanta, Georgia 30339
(404) 892-4900
(404) 892-1020 FAX

RELEASE

For the sole consideration of

TWO HUNDRED EIGHTEEN THOUSAND ONE HUNDRED
THIRTY-ONE AND 48/100Dollars (\$218,131.48) paid as follows:By Draft No. 22976\$ 195,000.00

Railroad Retirement Board Lien

5,244.50

Railroad Retirement Tax

5,011.98

Supplemental Sickness Benefits

.00

Advances

12,875.00

Other

.00

Total Settlement

\$ 218,131.48receipt of which is hereby acknowledged, I, EDDIE W. HOLCOMB, SR.SSA# 257-66-2773, do hereby release and forever discharge Norfolk Southern Corporation,

Norfolk and Western Railway Company, Southern Railway Company and _____

and, to the same extent as if expressly named, their respective subsidiaries and affiliated companies, their leased and operated lines, and all other persons, firms and corporations, all of the respective predecessors, successors, assignees, lessors, officers, directors, agents and employees of the aforesaid released parties, past and present, as well as their heirs and legal representatives, of and from all claims which I have or may hereafter have, for personal injuries, known or unknown, and/or loss of any kind resulting or in any way arising from an accident(s) which occurred

at or near CHATTANOOGA, TENNESSEE, on or about JUNE 8, 1986at or near GREEN, GEORGIA, on or about JUNE 25, 1984

at or near _____, on or about _____, 19____

and all other accident(s) to date. I understand that the signing of this paper prevents me from making any further claims against the persons and entities described above in connection with said accident(s).

Pursuant to the provisions of the Railroad Retirement Act, the Unemployment Insurance Act and the Retirement Tax Act, the following apportionment is made:

(a) To Time Lost \$ 43,964.70

(If any sum is allocated to time lost, complete and attach Form GCA 210)

(b) To Other Factors \$ 174,166.78Total Settlement \$ 218,131.48I have read and understood this releaseGiven under my hand and seal on this 30TH day of MARCH, 1987Eddie W. Holcomb Sr. (SEAL)

WITNESSES TO SIGNATURE:

(1) Carolyn J. Cat. Spink-Jackson (2) J. W. Holcomb

Name

Rockville, MD 3015

Address

Name

4715 Goring Dale Dr. #1501

Address

Chattanooga, TN 37446

March 30, 1987

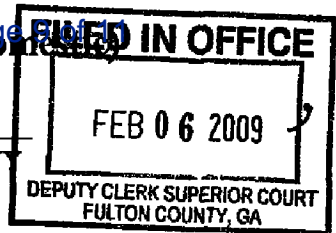
TO WHOM IT MAY CONCERN:

I am totally and permanently disabled and agree that I will not seek to re-enter the services of Norfolk Southern Corporation, and, to the same extent as if expressly named, its subsidiaries, parents, affiliated companies and its leased and operated lines, and all of their respective successors and assigns, effective the above date, and that none of such companies are under any obligation to take or retain me in employment in any capacity.

Eddie W. Holcomb Jr.



General Civil Case Filing Information Form (Non-Domestic)



Court

☒ Superior☐ StateCounty Fulton

Date Filed

MM-DD-YYYY

Docket #

2009CV164484

Plaintiff(s)

Holcomb, Eddie W., Sr.

Last	First	Middle I.	Suffix	Prefix	Maiden
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Last	First	Middle I.	Suffix	Prefix	Maiden
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Last	First	Middle I.	Suffix	Prefix	Maiden
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Last	First	Middle I.	Suffix	Prefix	Maiden
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No. of Plaintiffs 1

Plaintiff/Petitioner's Attorney

☐ Pro SeWarshauer, Michael J.

Last	First	Middle I.	Suffix
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Bar # 018720

Check Primary Type (Check only ONE)

- ☐ Contract/Account
- ☐ Wills/Estate
- ☐ Real Property
- ☐ Dispossession/Distress
- ☐ Personal Property
- ☒ Equity
- ☐ Habeas Corpus
- ☐ Appeals, Reviews
- ☐ Post Judgment Garnishment, Attachment, or Other Relief
- ☐ Non-Domestic Contempt
- ☐ Tort (If tort, fill in right column)
- ☐ Other General Civil Specify _____

Defendant(s)

Norfolk Southern Railway Company, F/K/A

Last	First	Middle I.	Suffix	Prefix	Maiden
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Norfolk and Western Railway Company, and

Last	First	Middle I.	Suffix	Prefix	Maiden
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Southern Railway Company and

Last	First	Middle I.	Suffix	Prefix	Maiden
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Norfolk Southern Corporation

Last	First	Middle I.	Suffix	Prefix	Maiden
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No. of Defendants 1

If Tort is Case Type:

(Check no more than TWO)

- ☐ Auto Accident
- ☐ Premises Liability
- ☐ Medical Malpractice
- ☐ Other Professional Negligence
- ☐ Product Liability
- ☐ Other Specify _____

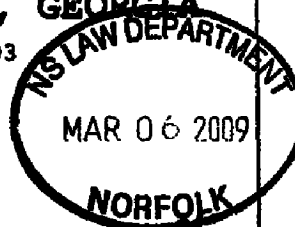
Are Punitive Damages Pleaded? ☐ Yes ☐ No

to Roger A. Petersen

3-6-09

IN THE SUPERIOR COURT OF FULTON COUNTY, GEORGIA

136 PRYOR STREET, ROOM C-103, ATLANTA, GEORGIA 30303



Eddie Holcomb, Sr.

Case No.:

SUMMONS

Plaintiff,

vs.

Norfolk Southern Railway
Company

Defendant

RECEIVED

FEB 20 2009

CIVIL PROCESS-BIBB COUNTY

TO THE ABOVE NAMED DEFENDANT(S):

You are hereby summoned and required to file with the Clerk of said Court and serve upon Plaintiff's Attorney, whose name and address is:

Michael S. Warshauer
Warshauer P.C. : Thornton PC
3350 Riverwood Pkwy Suite 2000
Atlanta Ga 30339

An answer to the complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, Judgment by default will be taken against you for the relief demanded in the complaint.

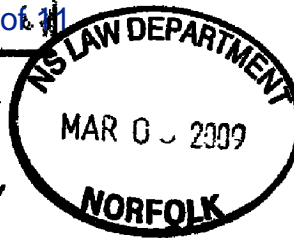
This 6th day of February 20 09

The Hon. Cathelene Robinson
Clerk of Superior CourtBy [Signature]
Deputy Clerk

To Defendant upon this petition is served:

This copy of complaint and Summons was served upon you _____, 20__

Deputy Sheriff

Civil Action No. 2009CV164484Date Filed 2/6/2009Magistrate Court ☐
Superior Court ☒
State Court ☐
Georgia, WINNETT COUNTY**RECEIVED**

Attorney's Address

FEB 20 2009

8930

CIVIL PROCESS-BIBB COUNTY

Name and Address of Party to be Served

Norfolk Southern Railway Corp.,
F. Kennedy Hall, 2700 Miller St. SW
Macon, Georgia 31201

Eddie W. Holcomb, Sr.

Plaintiff

VS.

Norfolk Southern Railway Co. F/K/A
Norfolk Western Railway Co. Southern Railway
Norfolk Southern Corp.

Defendant

Garnishee

SHERIFF'S ENTRY OF SERVICE

PERSONAL

☐ I have this day served the defendant _____ personally with a copy of the within action and summons

NOTORIOUS

☐ I have this day served the defendant _____ by leaving a copy of the action and summons at his most notorious place of abode in this County

☐ Delivered same into hands of _____ described as follows
 age, about _____ years, weight, about _____ pounds, height, about _____ feet and _____ inches, domiciled at the residence of defendant

CORPORATION

☒ Served the defendant Norfolk Southern Railway Company a corporation
 by leaving a copy of the within action and summons with F. Kennedy Hall
 in charge of the office and place of doing business of said Corporation in this County Registered Agent

TACK & MAIL

☐ I have this day served the above styled affidavit and summons on the defendant(s) by posting a copy of the same to the door of the premises designated in said affidavit, and on the same day of such posting by depositing a true copy of same in the United States Mail, First Class in an envelope properly addressed to the defendant(s) at the address shown in said summons, with adequate postage affixed thereon containing notice to the defendant(s) to answer said summons at the place stated in the summons

NON EST

☐ Diligent search made and defendant _____ not to be found in the jurisdiction of this Court

This 5th day of March 2009

Dep. Jaretta D. Smith
 DEPUTY

SHERIFF DOCKET _____ PAGE _____

WINNETT COUNTY, GEORGIA

WHITE Clerk CANARY Plaintiff Attorney PINK Defendant